

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

HAROLD LEMAY ENTERPRISES, INC.,
D/B/A CITY SANITARY, JOE'S REFUSE,
WHITE PASS GARBAGE AND RURAL GARBAGE¹

Employer

Case 19-RC-14787

and

TEAMSTERS UNION LOCAL 252, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

I. SUMMARY

The Employer is engaged in the refuse and recycle collection business, with a facility in Centralia, Washington. Employer also employs long haul drivers who are currently represented by Teamsters Local 252. At issue in this case is whether the petitioned-for-unit of 21 refuse⁴ and recycle drivers is an appropriate unit. Employer argues that the unit sought by Petitioner is inappropriate because the refuse and recycle drivers are separate and distinct groups of employees due to their pay differential, licensing requirements, lack of interchange and bargaining history. Employer therefore contends that the only appropriate unit is refuse drivers.

¹ Employer's name appears as corrected at the hearing.

² Employer and Petitioner filed timely briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. ⁴ Petitioner and Employer use the term refuse and garbage interchangeably. For sake of clarity, I shall use "refuse" to refer to both refuse and garbage.

Based on the record evidence and the parties' contentions and arguments, I find that the unit sought by Petitioner is an appropriate unit in the circumstances of this case. Accordingly, I have directed an election in a unit comprised of both recycle and refuse drivers.⁵

Below, I have provided a section setting forth the evidence, as revealed by the record in this case, relating to Employer's operations and the terms and conditions of employment for employees in the recycle and refuse driver unit (Unit) proposed by the Petitioner. Following the "Evidence" section is my analysis of the applicable legal standards in this case, my conclusion, and a section directing an election in the Unit.

II. EVIDENCE

A. Employer's Operations

Employer engages in the refuse and recycle collection business through four waste collection franchises, Joe's Refuse, White Pass Refuse, City Sanitary and Rural Refuse. Employer's customers include commercial and residential refuse and recycle collection accounts in south Thurston County, east Lewis County, rural Lewis County and the City of Centralia, Washington. Employer's base of operations at issue here is its Centralia terminal. Employer also operates a recycle center in Centralia where recyclable material is deposited and processed.

Employer employs fourteen refuse drivers, seven recycle drivers, and nine long-haul drivers who all work out of its Centralia terminal. In addition, Employer employs five shop mechanics, three office staff, three recycle processors, and five managers who work in either Employer's Centralia terminal or recycling center. Here, Petitioner proposes a unit composed of refuse and recycle drivers. The long-haul drivers are excluded from the petition because they are currently covered by a labor agreement with Teamsters Local 252.

B. Terms and Conditions of Employment for Unit Employees

Both the recycle and refuse truck drivers receive the same health and pension benefits, and are covered by a uniform employee handbook. All recycle, refuse, and long-haul drivers also attend quarterly safety meetings conducted by their immediate supervisor and route foreman Ed Lewis, and terminal manager Jim Kalkus.

Lewis is the common supervisor of both recycle and refuse drivers at the Centralia terminal. Lewis is in charge of routing and last-minute route changes. Lewis reports to Jim Kalkus. Lewis also hires drivers and has posted notices in the Centralia terminal for driver openings. Don Blackburn is a manager under Lewis and has a small office in Employer's recycling center that is separate from the Centralia terminal. From that office, Blackburn manages the Employer recycling center, including 3 employees classified as recycle processors. Additionally, recycle drivers may ask Blackburn for assistance, but they do not report to him.

Employer's fourteen refuse drivers operate drop trucks, automated refuse trucks, front load refuse trucks, and rear load refuse trucks. Each of these trucks is equipped with airbrakes and has a gross vehicle weight (GVW) between 34,000-58,000 pounds. A Commercial Drivers

⁵ The evidence at hearing also revealed that one employee in the unit found appropriate, performed yard waste pickup about twice per month. Based on that evidence and other factors discussed in the decision, I have included the classification of yard waste driver in the unit found appropriate.

License (CDL), with a restriction on the use of air brakes removed, is required to operate each of these refuse trucks. The refuse drivers collect refuse from both commercial and residential customers. The refuse drivers earn between \$15.00 and \$18.38 per hour and have hire dates ranging from June 6, 1984 to June 10, 2004.

The seven recycle drivers operate rear-load, flatbed, and curbside recycle trucks. The recycle drivers collect recyclable paper, glass and metal from residential customers in the curbside recycle trucks. Employees designated as recycle drivers also collect and deliver both refuse and recycle receptacles using a flatbed truck. The GVW of each of the curbside recycle and flatbed trucks is 18,000 pounds. The curbside recycle and flatbed trucks are not equipped with air brakes and no CDL is required to operate either type of truck. The recycle drivers also collect cardboard and paper from commercial customers using rear-load recycle trucks. The GVW of the rear-load recycle trucks is 34,000 pounds. The rear-load recycle trucks are equipped with air brakes and a CDL is required to operate this type of truck. The recycle truck drivers earn between \$10.00 and \$14.00 per hour and have hire dates ranging from July 11, 2003 to February 11, 2005.

Nearly half of the refuse drivers at the Centralia terminal have transferred from a recycle driver position to a refuse driver position. At least one employee currently performs both recycle and refuse driver duties. Charles Lloyd, who has worked for Employer for 4 years, started as a curbside recycle driver, but now works primarily as a front load refuse driver. Additionally, Lloyd fills in for a commercial recycle route using a rear-load truck and also delivers totes using a flatbed truck when a substitute driver is needed. Moreover, at least one current recycle driver with a CDL is seeking a position as a refuse driver.

Both recycle and refuse drivers originate their respective routes from Employer's Centralia terminal. Contrary to Employer's contention, both refuse and recycle drivers start work at similar times. The refuse drivers start work at 6:30 or 7:00 a.m., with the exception of one refuse driver who starts at 6:00 a.m. Similarly, the recycle drivers start work at 6:30 or 7:00 a.m., with the exception of one driver who starts at 5:00 a.m. Further, to the extent there is a difference in driver start times, the difference is only one-half hour. All drivers receive their routing instructions from a central computer in the terminal that downloads information to a computer in the cab of their respective trucks. For last minute changes in service, each driver picks up a clipboard containing this information from a common area. During the course of the day, refuse and recycle trucks may cross paths and consequently must coordinate their movements on the streets to avoid gridlock.

Moreover, all drivers share a common parking lot, time clock, and payroll window. The refuse and recycle drivers also have contact with each other as they clock in each day. All trucks are marked with the name "Employer" on the side. All drivers wear the same uniform and are paid on the same day. All drivers are required to attend safety meetings and are invited to attend Employer's Christmas party.

C. Bargaining History

The long haul drivers employed by Employer's City Sanitary Company franchise are currently represented by Teamsters Local 252 under a labor agreement which by its terms is

effective from May 1, 2001 to April 30, 2009.⁶ There is no indication in the record that the recycle and/or refuse drivers in the petitioned-for Unit, have ever been represented by any labor organization. The Petitioner does not seek to include any other employees in the Unit. Further, there is no evidence that any other labor organization is seeking to represent either group of drivers in the petitioned-for Unit.

D. Industry Standard

Employer contends that in waste collection, there exists an industry standard of separate refuse and recycle driver units. In support of this contention, Employer cites separate bargaining units in the other franchises it operates in Aberdeen, Lakewood, Olympia, and Tacoma, Washington. Employer also contends an expired contract from a competitor waste collection company indicates the same standard.⁷

III. LEGAL ANALYSIS

Section 9(b) of the Act confers on the Board the discretion to establish the unit appropriate for collective bargaining and to decide whether such unit shall be the employer unit, craft unit, plant unit, or subdivision thereof. There is nothing in the Act which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be “appropriate,” that is, appropriate to insure that employees in each case have “the fullest freedom in exercising the rights guaranteed by this Act.” *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

The Board permits drivers to be represented either separately or as part of a more comprehensive unit depending upon the community of interest of the employees involved and the desires of the petitioning union. *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700, 701 (1967) (discussing *Marks Oxygen Co.*, 147 NLRB 228 (1964)). With drivers, single-terminal units are presumptively appropriate. *Groendyke Transport*, 171 NLRB 997 (1968); *Alterman Transport Lines*, 178 NLRB 122 (1969); *Wayland Distributing Co.*, 204 NLRB 459 (1973). However, the Board has decided that Local and over-the-road drivers constitute separate appropriate units.⁸ The Board has also determined that driver-salesperson may constitute a separate appropriate unit.⁹

Many considerations enter into a finding of community of interest. See, e.g., *NLRB v. Paper Mfrs. Co.*, 786 F.2d 63 (3rd Cir. 1986). The factors affecting the ultimate unit determination may be found in the following sampling: 1.) degree of functional integration;¹⁰ 2.) common supervision;¹¹ 3.) the nature of employee skills and functions;¹² 4.) interchangeability

⁶ The parties also stipulated to exclude one garbage driver, Randy Guerrero, who is currently represented by Petitioner and covered by a 2001 - 2009 labor agreement separate and apart from the long-haul drivers' labor agreement.

⁷ Employer Exhibit 8.

⁸ See *Georgia Highway Express*, 150 NLRB 1649, 1651 (1965); *Alterman Transport Lines*, 178 NLRB 122 (1969); *Jocie Motor Lines*, 112 NLRB 1201, 1204 (1955); *Gluck Bros.*, 119 NLRB 1848 (1958). Compare *Carpenter Towing*, 266 NLRB 907 (1983).

⁹ See *Plaza Provision Co.*, 134 NLRB 910 (1962); *Southern Bakeries Co.*, 139 NLRB 62 (1962); *E. Anthony & Sons*, 147 NLRB 204 (1964); *Kold Kist, Inc.*, 149 NLRB 1449 (1964).

¹⁰ *Seaboard Marine Ltd.*, 327 NLRB 556 (1999); and *Transerv Systems*, 311 NLRB 766 (1993).

¹¹ *Harron Communications*, 308 NLRB 62 (1992); *Sears, Roebuck & Co.*, 319 NLRB 607 (1995).

¹² *Overnite Transportation Co.*, 331 NLRB No. 85 (2000) (all unskilled employees at particular location); *J. C. Penney Co.*, 328 NLRB 766 (1999); *Harron Communications*, supra; *Downingtown Paper Co.*, 192 NLRB 310 (1971); *Phoenician*, 308 NLRB 826 (1992).

and contact among employees;¹³ 5.) work situs;¹⁴ 6.) general working conditions;¹⁵ and 7.) fringe benefits.¹⁶

The Employer cites one case, Yuengling Brewing Co., 333 NLRB No. 104 (2001), in support of its position in this matter. However, that case is factually distinguishable from the situation before me and does not examine a community of interest of drivers. Accordingly it does not further Employer's proposition that Petitioner's proposed unit is inappropriate.

With regard to the degree of functional integration, I note that Employer's refuse and recycle drivers are engaged in collection of waste material. Both classifications of drivers collect, haul, and dispose of refuse or recyclable material from residential and commercial customers in furtherance of Employer's business.

The record also reveals that in the pursuit of the common task of waste disposal, both groups of drivers are directly supervised by the same person, Ed Lewis.

While I note that the nature of employee skills may be different because refuse truck operation requires a CDL with an endorsement allowing use of air brakes and operation of curbside recycle and flatbed delivery trucks does not, the nature of the employee skills and functions is similar. Both drivers collect and dispose of residential and commercial waste. I also note that two of the commercial recycle trucks require a CDL for operation.

Further, I recognize that the requirement of a CDL limits some of the interchangeability and contact among recycle and refuse truck drivers. However, there is evidence in the record that at least one employee performs both refuse and recycle duties, given the operational needs of Employer. Moreover, there is evidence that at least one recycle driver holds a CDL and is seeking a position as a refuse driver with Employer. Additionally, both groups of drivers have contact with each other on the streets as they perform their job, when they clock into a common time clock, when they receive their paychecks from the same payroll window, and when they attend the same mandatory safety meetings and Christmas party.

With respect to work situs, the record demonstrates that both groups of drivers originate from and return to the Centralia terminal each day, even though their dump locations are different. Moreover, both groups share a time clock and payroll window. Also, each driver receives routing instructions from the same computer system and last-minute route changes from clipboards collected in a common cubby hole area in the terminal. Additionally, refuse and recycle drivers both wear the same uniform and drive trucks similarly marked.

In terms of general working conditions, an employee handbook provides Unit drivers with identical terms and conditions of employment, and fringe benefits. And although the wages for recycle drivers and refuse drivers are significantly different, I note that they are both paid by the

¹³ *J. C. Penney*, supra; *Associated Milk Producers*, supra; *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Michigan Bell Telephone Co.*, 192 NLRB 1252 (1971). ¹⁴ *R-N Market*, supra; *Bank of America*, 196 NLRB 591 (1972); *Kendall Co.*, 184 NLRB 847 (1970). ¹⁵ *Allied Gear & Machine Co.*, 250 NLRB 679 (1980); *Sears, Roebuck & Co.*, supra; *Yale University*, 184 NLRB 860 (1970). See also *K.G. Knitting Mills*, 320 NLRB 374 (1995), where the Board held that the fact that employees receive a salary, do not punch time clocks, receive different health insurance benefits from other unit employees, and are able to adjust their own hours was not an adequate basis for exclusion from the unit.

¹⁶ *Allied Gear & Machine Co.*, supra; *Donald Carroll Metals*, supra; *Cheney Bigelow Wire Works*, 197 NLRB 1279 (1972).

hour with checks from Employer. I also note that, as a whole, the tenure of the refuse drivers is significantly longer than that of the recycle drivers.

Beyond the community of interest factors that support the conclusion that refuse and recycle truck drivers constitute an appropriate unit here, I note that there is no history of any labor organization seeking to represent one of the groups of the petitioned-for drivers as a separate unit. I also find that Employer's evidence of industry standard is unpersuasive. Employer presented testimony that refuse and recycle drivers are separate units in its Aberdeen, Lakewood, Olympia and Tacoma facilities. However, Employer's evidence fails to explain how the units came about. Moreover such testimony only demonstrates a single Employer's practice, rather than a standard in the industry.

Employer's other evidence presented at hearing of an expired collective bargaining agreement from a different waste disposal company to show industry standard, is also unpersuasive. First, the weight given to an expired contract involving a different company and a different Local is slight, if any. Further, assuming any weight is given to this evidence, the collective bargaining agreement presents a unit of "Truck drivers and regular helpers engaged in refuse pickup." However, the agreement fails to define specific categories of truck drivers and includes individuals classified as "helpers." Accordingly, the agreement appears to be more expansive as it includes a unit of drivers and helpers. Also, there was no evidence presented on how recognition in that agreement came about. Moreover, the collective bargaining agreement is only evidence of a single employer's past practice and not necessarily indicative of an industry standard. In sum, I conclude such evidence is not persuasive and does not support Employer's conclusion that a unit of recycle and refuse drivers is inappropriate based on industry standard.

Employer also contends that the wage disparity between refuse and recycle drivers warrants a conclusion that the two groups lack a community of interest. However, a distinction in the rate of pay does not affect the unit determination. *Four Winds Services*, 325 NLRB 632 (1998) (some paid under Davis-Bacon and some not), and *Donald Carroll Metals*, 185 NLRB 409, 410 (1970). Rather, it is to the general interests, duties, nature of work, and working conditions of the employees that significance is given in the resolution of unit questions. *Kansas City Power & Light Co.*, 75 NLRB 609 (1948).

Employer contends that refuse driver positions require CDLs and special skills and aptitude that a recycle driver need not possess. However, the evidence presented indicates that commercial recycle rear-load truck drivers are required to have a CDL and perform work similar to that of refuse rearload truck drivers. Moreover, Employer cites no legal basis for a distinction based on licensing requirements between drivers.

Employer next argues that refuse drivers start their shifts 30-60 minutes prior to recycle drivers. The evidence does not support this argument. In fact, the majority of both recycle and refuse drivers starts work at 6:30 or 7:00 a.m.

Employer also argues that there is a lack of interchange between drivers. Although a recycle driver is not automatically qualified to work as a refuse driver, there is evidence on the record, that at least one driver performs work as both a recycle and refuse driver. Additionally, there is evidence on the record that nearly half of Employer's refuse drivers have been hired from the ranks of recycle drivers. Further, there is evidence that at least one of Employer's drop trucks is used interchangeably for recycling and refuse collection, although it is not used to pick up both types of waste at the same time.

IV. CONCLUSION

In view of the above, the record as a whole and the parties' briefs and arguments, I find that the following Unit of employees share a sufficient community and, thus, constitute an appropriate unit for the purposes of collective bargaining.¹⁷ Accordingly, I shall direct an election in the following Unit of employees:

All regular full and part-time refuse (garbage) drivers, recycle drivers, and yard waste drivers employed by the Employer at or out of its Centralia, Washington location; excluding all office clericals, shop employees, recycle center employees, long-haul drivers, the one garbage driver currently covered by a 2001 - 2009 labor agreement, managers, guards and supervisors as defined by the Act.

There are approximately 21 employees in the Unit. **V.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS UNION LOCAL 252, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

¹⁷

See *Calco Plating Inc.*, supra and *Standard Oil Company*, supra.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before November 30, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list will be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case no extra copies need be submitted.

B. Notice of Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 5 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m. EST on December 7, 2005. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

DATED at Seattle, Washington, this 23rd day of November 2005. /s/

[Richard L. Ahearn]
Richard L. Ahearn, Regional Director National
Labor Relations Board, Region 19 2948 Jackson
Federal Building 915 Second Avenue Seattle,
Washington 98174